IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 21ST JUNE 2007 / 31ST JYAISHTA 1929

CRP.No. 557 of 2007()

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AGAINST THE ORDER DATED 30/03/2007 IN IA 1793/2006 IN CMA.9/2006 of PRINCIPAL SUB COURT,ALAPPUZHA

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REVN. PETITIONER: PETITIONER/APPELLANT:

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BABU ANTONY, S/O.ANTONY,
NADACKAPARAMBIL, CHETTIKAD MURI,PATHIRAPPALLY VILLAGE, ALAPPUZHA.

BY ADV. SRI.S.SANAL KUMAR
SMT.BHAVANA VELAYUDHAN

RESPONDENTS: CR.PETITIONERS/ RESPONDENTS:

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1. VARGHESE, AMBAKANDATHIL VEEDU,
MANNANCHERRY MURI, MANNANCHERRY VILLAGE.

2. A.V.SUNIL, S/O.VARGHESE,
AMBAKANDATHIL VEEDU, MANNANCHERRY MURI,
MANNANCHERRY VILLAGE.

3. THOMAS. S/O.JOSEPH, NEDUNGADU VEEDU,
PONGA MURI, KAINAKARY VILLAGE.

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION A/W W.P(C)19044/07 ON 21/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**M.N.KRISHNAN, J.**

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**C.R.P.NO: 557 OF 2007 D &**
**WP(C)No. 19044 OF 2007 P**

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**Dated this the 21st June, 2007.**

**O R D E R**

This C.R.P is preferred against the order in I.A.1793/06 in C.M.A.9/2006 and the writ petition is filed against the order in I.A.1784/06 in C.M.A.9/2006. A brief reference to the facts are necessary for a proper disposal of the case. The revision petitioner herein has filed a suit for injunction and along with the same moved interim application for injunction as I.A.1344/06. The injunction petition was dismissed and therefore he preferred a C.M.A before the Subordinate Judge's Court, Alappuzha. When the C.M.A was pending the matter was referred to the Lok Adalat. The Lok Adalath at its sitting on 1.8.2006 passed an award, which reads as follows:-

> "The period of the sale is extended till 15.9.2006. If the plaintiff/appellant fails to get the sale deed executed after paying the balance sale consideration or or before the said date he will loose his right to purchase the property.
>
> After 15.9.2006 the defendants are allowed to sell the plaint schedule property to anybody of their choice. After 15.9.2006 the plaintiff is only entitled to get back his advance amount of Rs.7,50,000/- (Rupees seven lakhs fifty thousand only) on the date of the execution of the said sale deed to be executed by the defendants in favour of the strangers.
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> Both the parties agree that there is no

provision for extending the period beyond 15.9.2006."

As per the terms of award the plaintiff in the suit is entitled to get the document executed on payment of balance consideration and in case of default he will loose his right to purchase the property. The award specifically gives power to the defendants to dispose of the property after 15.9.2006 and restricts the right of the plaintiff to get back only the advance consideration paid for the same. Again, it is reiterated that "both the parties agree that there is no provision for extending the period beyond 15.9.2006." Plaintiff, with his both eyes open entered into the compromise and agreed for an award and accordingly an award has been passed by the competent Lok Adalat . Now comes the question. According to the plaintiff the property was not measured and the documents of title were not shown and the defendants committed breach in properly executing the document and therefore he contends that the plaintiff must be given an opportunity to get at the property by extending the time that is stipulated in the award. On the contra, the defendants would contend that the plaintiff did not move his little finger to pay the

balance consideration or to get the document executed on or before the relevant date viz., 15.9.2006. A perusal of the order passed by the court below would reveal that the defendants had gone to the Sub Registrar's office on 15.9.2006 and waited there and in order to prove the presence before the Registrar's office they have stood as witnesses in other documents and thereby they confirmed their stand of attending the Registrar's office on 15.9.2006. This is what is seen from the order of the court below. On the other hand, learned counsel for the appellant would contend that his client instituted a suit for specific performance of the contract. When the parties enter into a compromise with both eyes open and when the terms of the compromise specifically gives importance to the date, it has to be respected by the authorities or when there is some difficulty, their right is to approach the authority who fixed the date to extend it. The plaintiff approached the civil court for specific performance of the contract but did not go to the authority which passed the award nor did even send a registered notice to the defendants requesting to grant further time or to comply with the directions and demands which he wants to clarify,

but keeps quiet. A reading of the award of the Lok Adalath makes it crystal clear that the parties were bent upon the performance of the contract fixing the outer limit as 15.9.2006 and thereafter right had been given to the defendants to transfer the property and the right of the plaintiff is restricted to get back the amount that is paid as advance. So when the defendants go the Registrar's office on 15.9.2006 and the plaintiff does not turn up and thereafter the defendants transfer the property in favour of third persons which is permissible as per the decree, one cannot blame them for their act. Now, learned counsel for the revision petitioner had brought to my attention the decision of the Apex Court reported in **Thomas v. Thomas Job** {2005(3) KLT 1042(SC)}. It was a case where a matter was compromised between the brothers in an Adalath and as per the terms of the award, one party has to pay an amount of Rs.9.5 lakhs with an outer limit of two years and on default of the respondent to execute the document, the appellant could get it executed through court. In case of default on the part of the appellant, the said right has to be forfeited and he was entitled to be paid only Rs.3.5 lakhs by the respondent. Therefore, the outer limit of two

years was to end on 5.10.2001. The appellant therein issued a notice to the respondent on 3.10.2001 and it returned unserved to the appellant. Thereafter he again sent a telegram on 26.10.2001 requiring the respondent to execute the sale deed. So, from the conduct of the person in that case his intention to get the document executed much prior to the date of completion of two years was manifestly seen from the notice issued and therefore the Apex Court held that in such cases it has to be construed in a liberal way and time can be extended. But in the case on hand, as I stated earlier, the plaintiff did not move his little finger to get the document executed nor did send a notice stating that he is prepared to comply with the terms and terms of the decree that has been passed by the Lok Adalath but he goes to a civil court to file a suit for specific performance alleging so many other grounds. So, the conduct of the plaintiff is most unsatisfactory and he is not entitled to get any benefit and what the defendants have done is strictly in accordance with the terms of compromise which has been entered into between the parties and which is expected to be respected by both the parties as per law. The learned trial Judge had elaborately

considered these aspects and had arrived at a decision that the plaintiff is not entitled to get any benefit as prayed for in the applications. But the court in order to avoid multiplicity of proceedings directed the defendants to pay back the amount which they had received as consideration as per the terms of the award. I do not find any illegality or irregularity which requires any intervention by this court and therefore C.R.P as well as writ petition are dismissed.

**M.N.KRISHNAN**
**Judge**

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